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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.622(b),) MM DOCKET NO. 00-138
Table of Allotments,) RM-9896
Digital Television Broadcast Stations.)
(Boca Raton, Florida))

Directed to: Secretary,
Federal Communications Commission

MOTION TO STRIKE REPLY OF SHERJAN BROADCASTING CO., INC.
TO OPPOSITION TO APPLICATION FOR REVIEW

Guenter Marksteiner ("Marksteiner") hereby respectfully submits his Motion To Strike the second and third paragraphs of the "Reply" of Sherjan Broadcasting Co., Inc. ("Sherjan"), filed August 8, 2005, to Marksteiner's "Opposition" to Sherjan's "Application For Review" by the Commission of staff decisions in the above-captioned proceeding modifying the digital allotment for Station WPPB-TV, Boca Raton, Florida, from Channel *44 to Channel *40, *Report and Order*, 17 FCC Rcd 7114 (MB 2002)("R&O"), a staff decision affirming the *Report and Order* and denying Sherjan's "Petition For Reconsideration" of the *Report and Order*, *Memorandum Opinion and Order*, 17 FCC Rcd 23528 (MB 2002)(First MO&O"), and a staff decision reaffirming the *Report and Order* and dismissing Sherjan's "Petition For Further Reconsideration" of the *First MO&O*, *Memorandum Opinion and Order*, released May 23, 2005 (MB 2005)("Second MO&O"). With respect thereto, the following is stated:

1. The second and third paragraphs of the Reply must be stricken since in them Sherjan without basis inexplicably claims that Marksteiner does not have standing in this proceeding

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although Marksteiner has participated in this proceeding since the proceeding was initiated in 2000. Marksteiner has participated at every level of this proceeding. The Commission has issued three previous decisions in this proceeding, which recognize Marksteiner's standing. The School Board Of Broward County, Florida, licensee of WPPB-TV, did not participate to oppose Sherjan's Petition For Further Reconsideration ("Further Reconsideration") of the First MO&O. In the Second MO&O denying the Further Reconsideration, the Commission noted that Marksteiner had participated earlier in the proceeding and had filed an opposition to the Further Reconsideration and ruled on the Further Reconsideration on that basis.

2. The sole precedent cited by Sherjan for the inexplicable claim that Marksteiner does not have standing bears no relevance to this proceeding. In *School Board of Dade County*, 18 FCC Rcd 24047 (WTB 2003), cited by Sherjan, the party asserting standing was a prospective applicant for the channels at issue who argued that it would not be able to obtain the channels if the application at issue were granted. In this proceeding, Marksteiner has claimed standing not as a prospective applicant, but as a holder of rights under a contract which the current licensee of WPPB-TV, the School Board, assumed when it acquired WPPB-TV. In the contract, a prior licensee of WPPB-TV, Palmetto Broadcasters Associated for Communities, Inc., agreed to request modification of WPPB-TV's DTV allotment to Channel *40 in return for Marksteiner entering into a settlement ending long standing litigation between Marksteiner and the prior licensee. As stated in Marksteiner's Opposition,¹ and in Marksteiner's pleadings at earlier levels of this proceeding, pursuant to the contract, the prior licensee filed the initial petition for rulemaking commencing this proceeding and Marksteiner filed reply comments in support of the petition to

¹ Opposition at fn. 1.

protect his rights in the contract. Moreover, Marksteiner is not a prospective applicant for Channel *44 as Marksteiner already holds a license to operate a station on Channel 44 at Miami, Florida – for LPTV Station WHDT-LP, Miami, Florida. As indicated in the contract and prior pleadings filed in this proceeding, modification of WPPB-TV's DTV allotment to Channel *40 will allow the service currently provided by WHDT-LP on Channel 44 to be preserved.

3. The third paragraph of the Reply must be additionally stricken since Sherjan in it makes the false statement that Marksteiner's "wishes to use Channel 44 as a future displacement channel for his Station WHDT(TV) [sic] [correct call sign WHDT-DT], Stuart, Florida." Sherjan provides no basis whatsoever for its false statement. Marksteiner has never indicated to the FCC an intent to use Channel 44 for WHDT-DT. To the contrary, Marksteiner, as noted above, has stated previously in this proceeding that WHDT-LP is currently licensed on Channel 44 at Miami and WPPB-TV's move to Channel 44 will preserve WHDT-LP's current service. The false statement must be stricken.

WHEREFORE, the premises considered, Marksteiner respectfully requests that the second and third paragraph's "Reply" be stricken.

Respectfully submitted,

GUENTER MARKSTEINER

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August 17, 2005

CERTIFICATE OF SERVICE

I, Carla Whitlock, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Motion To Strike Reply Of Sherjan Broadcasting Co., Inc. To Opposition To Application For Review" was sent this 17th day of August, 2005, by first-class United States Mail, postage prepaid to:

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*By Hand Delivery


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